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April 30, 2019  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36267

GRAND TRUNK WESTERN RAILROAD COMPANY  
—TRACKAGE RIGHTS EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY AND GRAND ELK RAILROAD LLC

**MOTION FOR PROTECTIVE ORDER OF  
GRAND TRUNK WESTERN RAILROAD COMPANY**

Bradon J. Smith  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606  
(312) 252-1500



Office of  
Proceedings

DECISION ID NO.: 47003  
DECIDED DATE: 5/15/2019  
SERVICE DATE: 5/16/2019  
APPROVED: *Quic Pri*  
Acting Director



ATTORNEY FOR GRAND TRUNK WESTERN  
RAILROAD COMPANY

Dated: April 29, 2019

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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GRAND TRUNK WESTERN RAILROAD COMPANY  
—TRACKAGE RIGHTS EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY AND GRAND ELK RAILROAD LLC



**MOTION FOR PROTECTIVE ORDER OF  
GRAND TRUNK WESTERN RAILROAD COMPANY**

Pursuant to 49 C.F.R. § 1104.14(b), Grand Trunk Western Railroad Company (“GTW”) hereby requests that the Board issue a Protective Order allowing GTW to file under seal an un-redacted copy of a document entitled as an “Amendment to the 1913 Trackage Rights Agreement and 1982 Consolidation Agreement” (“Amendment”) which is related to and bears upon the trackage rights transaction that is the subject of this proceeding.

GTW is concurrently filing notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(7) for GTW to acquire additional overhead trackage rights over approximately 1.50 miles of rail line owned by Norfolk Southern Railway Company (“NSR”) leased to Grand Elk Railroad LLC (“GDLK”) in Kalamazoo, Michigan, between Miller Road (milepost 2.17) and Kilgore Road (milepost 3.67).

GTW has attached a redacted version of the aforementioned Amendment as Exhibit 2 to its notice of exemption pursuant to 49 C.F.R. § 1180.6(a)(7)(ii) and has filed an un-redacted copy of that document under seal, subject to this request for a Protective Order. The Amendment contains commercially sensitive and confidential information the public release of which could cause competitive or other injury to GTW, NSR or GDLK. Public disclosure of the un-redacted

agreement is not necessary for the consideration or disposition of GTW's trackage rights notice of exemption.

GTW thus requests that the Board accept the un-redacted Amendment for filing under seal and adopt the proposed Protective Order contained in the appendix hereto to govern access to the un-redacted agreement. This approach is consistent with that taken by the Board in prior similar circumstances. See, e.g., Chicago, Central & Pacific Railroad Company — Trackage Rights Exemption — Cedar River Railroad Company, Finance Docket No. 35563 (STB served Dec. 30, 2011); The Kansas City Southern Railway Company — Trackage Rights Exemption — Illinois Central Railroad Company, Finance Docket No. 34309 (STB served Feb. 4, 2003).

WHEREFORE, GTW respectfully requests that the Board adopt the Protective Order contained in the appendix hereto.

Respectfully submitted,

A handwritten signature in black ink that reads "Bradon J. Smith". The signature is written in a cursive, flowing style.

Bradon J. Smith  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 800  
Chicago, Illinois 60606  
(312) 252-1500

**ATTORNEY FOR GRAND TRUNK WESTERN  
RAILROAD COMPANY**

Dated: April 29, 2019

## APPENDIX

### PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the un-redacted Amendment to the 1913 Trackage Rights Agreement and 1982 Consolidation Agreement dated December 13, 2018, submitted under seal on April 29, 2019, in STB Docket No. FD 36267.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to Grand Trunk Western Railroad Company ("GTW") of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of GTW or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on GTW, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR § 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must file simultaneously a public version of any confidential submission filed with the Board. The confidential version may be served on other parties in electronic format only.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

## UNDERTAKING

I, \_\_\_\_\_, have read the Protective Order governing the filing of Confidential Information by Grand Trunk Western Railroad Company ("GTW") in STB Docket No. FD 36267, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36267 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review or remand), I will promptly destroy any documents containing or reflecting Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that GTW shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Affiliation: \_\_\_\_\_